19/42 **File No.** O C.P.C./42

K

Legal **DEPARTMENT**
"A" **BRANCH**

Subject:—

Opinions under the Code of Civil Procedure

P. 67-E

File No. O C.P.C./42
Std. Sectt. Slip 24 B a.

67-A

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8-5-56.
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11431

10-12-31.

Submitted

This is in connection with a suit proposal to be filed by certain persons against the trustees of Shri Venktesh Temple for alleged breaches of trust and for their removal from his trusteship, appointment of new trustees, rendering of Accounts, asettlement of a scheme for the proper administration and management of the trust etc. The plaintiffs have applied for the con-sent of the Advocate General to the filing of the suit as required by section 92 of the C.P.C. The Collector has addressed a letter to the Advocate General forwarding the papers and requesting the Advocate General to give the necessary permission to file the suit. This letter (p 47) was submitted by the collector through the Commissioner , S.D. who forwarded it to the R.D. with Conseem concurence. The R.D. has forwarded the papers to the R.L.A. for necessary action The papers and the letter may be forwarded to the Advocate General for disposal. The necessary draft is put up for approval.

Sd/-

15/12/41.

P.A.

This relates to a suit which is proposed to be brought by the petitioners on behalf of the Brahmin community of Kalas for the better management of a certain temple in taluka Bankapur, District Dharwar. The petitioners have approached the Collr. of Dharwar for granting them necessary permission to institute the suit against the present trustees of the temple. Instead of giving the consent himself the Collr. has forwarded the papers through the

Revenue Department to the Advocate General and

has asked him to grant the necessary permission and R.D.

has sent the papers to the R.L.A. for

taking necessary action.

2. It is not necessary to ask the Advocate

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6/5/56.
h Copies.

Below letter from the Collector of Dharwar, No. L.A.W.-380, dated the 5th November 1941, received through the Revenue Department, with that Department's endorsement No. S. 101/28539-C, dated the 5th December 1941.

No. 6

Office of the

Remembrancer of Legal Affairs,

Bombay Castle, 3rd Jan. 1942.

Returned.

2. It is not neces ary to ask the Advocate General to give his consent to the institution of the proposed suit. Under section 93 of the civil Procedu e Code it is competent to the Collector to exercise with the Previous sanction of the Provincial Government the powers conferred by section 92 on the Advocate General and consequently the Collector can give consent to the institution of the proposed suit after obtaining the sanction of Government.

O.O. [illegible]

23/12

Remembrancer of Legal Depar Affairs.

Sd/-
22-12-41

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R.I.No. 54
5-1-1942.

Submitted

2. This relates to a suit proposed to be filed by the petitioners representing the ~~ryots~~ vista of the village Gundgatti in Kod Taluka, District Dharwar, against the panchas of the temples of Shri Kalleshwar and Shri Hanumant, for their alleged mismanagement of the properties of the temples and for framing a scheme. The petitioners have approached the Collector of DharwarDharwar for granting them the necessary permission to institute a suit under section 92 and 93 C.P.C. Instead of giving the consent himself the Collector has forwarded the papers to the Advocate General through the Revenue Department with a recommendation that the necessary permissionmay be granted. The R.D. has sent the papers to the R.I.A . for transmission to the Advocate General

3. This case is similar to the one dealt with in attention of the R.D. is invited to R.I.A's Memo . No. 6 dated 3-1-42. and that Deptt. to informed that it is not necessary to ask the Advocate General to give his consent to the institution of the proposed suit and that under section 93 C.P.C. the Collector can give such a consent after obtaining the sanction of Govt.

S.H. Potnis 7-1

U.R. to R.D.No. 206 dated 9-1-1942.

S.A.K. 7-1 4 copies

No. S. 101/657-C.
Revenue Department.
Bombay Castle. 27th January 1942.

Subject:- Suit.
Permission to file--
against the Panchas of
Hanmant Dev temple and Malleshwar Dev Temple.

MEMORANDUM.

The undersigned presents compliments to the Collector of Dharwar and, with reference to his letter. No. C.A.L. 478. dated December 1941. is directed to state that it is not necessary to ask the Advocate General to give his consent to the institution of the proposed suit. Under section 93 of the Civil Procedure Code. it is competent for the Collector. with the previous sanction of Government. to give such consent.

2. In exercise of the powers conferred by section 93 of the Code of Civil procedure. 1908. the Government of Bombay is pleased to give sanction to the exercise by the Collector of Dharwar. of the powers conferred by section 93 of the said Code on the Advocate General in respect of the institution of the suit by Messrs. Hanmantgouda Mallangouda Madigourdar. Shiddappa Ajjappa. both of Gundgatti in the Kod taluka of the Dharwar district. in connection with the religious and charitable properties belonging to the Hanmant Dev temple and the Malleshwar Dev temple at said Gundgatti in the Kod taluka.

3. The papers of the case are returned.

By order of the Governor of Bombay.

Sd/-

For Under Secretary to the Government of Bombay.
Revenue Department.

Accompaniment:- Cases papers

Copies forwarded to -
The Commissioner, Southern Division (with reference to his memorandum. No. L.A.V. 657. dated 10th December1941).
The District Judge, Dharwar.
The Remembrancer of Legal Affairs.
The Legal Department.
The Home Department.

S.A.H.
7-5-5..
4 Copies

Religious and charitable endowments.
Religious and charitable properties belonging to 'Vithal Rakhumai Panchayatan Temple' at Dahisar in the Bombay Suburban District.

GOVERNMENT OF THE BOMBAY.
Revenue Department.
Resolution No. S. 101/2039.
Bombay Castle 27th January 1942.

Letter from the Collector, Bombay Suburban District, No. L.A.W. 75, dated the -December 1941.

Memorandum from the Commissioner, Northern Division, No. L.A.W. 100/ -III, dated the 22nd January 1942.

Resolution:- In exercise of the powers conferred by section 93 of the Code of Civil Procedure, 1908, the Government of Bombay is pleased to accord sanction to the exercise by the Collector, Bombay Suburban District, of the powers conferred by section 92 of the said Code on the Advocate General in respect of the institution of the suit by Mr. Y. R. Tawde and other villagers of Dahisar in the Bombay Suburban District in connection with the religious and charitable properties belonging to the 'Vithal Rakhumai Panchayatan Temple' at Dahisar in the Bombay Suburban District.

By order of the Governor of Bombay.

R.F.Keith,

Under Secretary to Government.

To
The Commissioner, Northern Division,
The Collector, Bombay Suburban District (with papers of the case),
The District Judge, Thana,
The Remembrancer of Legal Affairs,
The Legal Department,
The Home Department.

No. of 1942.

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Religious and charitable endowments.
Religious and charitable properties belonging to the 'Dharmashala and Laxminarayan temple' at Bhusaval in the East Khandesh district.

GOVERNMENT OF BOMBAY
Revenue Department.
Resolution No . S. 101/225.
Bombay Castle, 27th January 1942.

Letter from the Collector of East Khandesh , No. L.A.W. 459, dat the 4th June 1941.

Memorandum from the Commissioner, Central Division, No. L.A.W. 286, dated the 18th June 1941.

Letter from the Collector of East Khandesh, No. L.A.W. 1459, dat the 1st November 1941.

Resolution:- In exercise of the powers conferred by section 93 of the Code of Civil Procedure, 1908, the Government of Bombay is pleased to accord sanction to the exercise by the Collector of East Khandesh of the powers conferred by section 92 of the said Code on the Advocate General, in respect of the institution of the suit by Mr. Bhagwandas Hirabhai and his wife Mrs. Radhabai, both of Bhusawal in the East Khandesh district in connection with the religious and charitable properties belonging to the said Dharmashala and the Laxmi Narayan temple at Bhusawal in the East Khandesh district.

By order of the Governor of Bombay

R.F.Keith,
Under Secretary to Government.

To
The Commissioner, Central Division.
The Collector of East Khandesh (with papers of the case).

The District Judge, East Khandesh .
The Remembrancer of Legal Affairs.
The Legal Department.
The Home Department.

.....

No. of 1942.
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Religious and charitable endowments.
Religious and charitable
Properties belonging to
'Char Toda Masjid and Kabrastan'
at Ahmedabad.

GOVERNMENT OF BOMBAY
Revenue Department.
Resolution No. S. 101/4213.
Bombay Castle, 5th March 1942.

Letter from the Collector of Ahmedabad, No. L.A.V. 761, dated the 7th February 1942.

Memorandum from the Commissioner, Northern Division, No. L.A.V. 100-III, dated the 18th February 1942.

Resolution:- In exercise of the powers conferred by section 93 of the Code of Civil Procedure, 1908, the Government of Bombay is pleased to accord sanction to the exercise by the Collector of Ahmedabad of the powers conferred by section 92 of the said Code on the Advocate General in respect of the institution of the suit by Khan Bahadur Faiz Mahomedkhan and others in connection with the religious and charitable properties belonging to the Char Toda Masjid and Kabrastan at Ahmedabad.

By order of the Governor of Bombay

H. F. Keith.

Under Secretary to Government.

To.
The Commissioner, Northern Division.
The Collector of Ahmedabad (with papers of the case).
The District Judge, Ahmedabad.
The Remembrancer of Legal Affairs.
The Legal Department.
The Home Department.

No. of 1942.

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Religious and charitable endowments.

Charitable properties belonging to Math for Gosavi community at Rasta Peth, Poona City : Institution of suit in connection with.

GOVERNMENT OF BOMBAY
Revenue Department.
Resolution No. S. 101/7008
Bombay Castle. 24th March 1942.

Memorandum from the Collector of Poona, No. R.S.T.S.E. 148/189, dated the 9th March 1942.

Memorandum from the Commissioner, Central Division, No. L.A.V. 294, dated the 17th March 1942.

Resolution:- In exercise of the powers conferred by section 93 of the Code of Civil Procedure, 1908, the Government of Bombay is pleased to give sanction to the exercise, by the Collector of Poona, of the powers conferred by section 92 of the said Code on the Advocate General in respect of the institution of the suit by Mr. Govind Ir Narayan Ir Gosavi and three others of Poona in connection with the charitable properties belonging to the Math for the Gosavi community at Rasta Peth, Poona City.

By order of the Governor of Bombay.

R.F.Keith,

Under Secretary to Government.

To
The Commissioner, Central Division,
The Collector of Poona (with the case papers),
The District Judge, Poona,
The Remembrancer of Legal Affairs,
The Legal Department
The Home Department.

No. of 1942.

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Religious and charitable endowments.
Religious and charitable properties belonging to shrine of shree Ram at Alandi, district Poona.
Institution of suit in connection with.

GOVERNMENT OF BOMBAY.
Revenue Department
Resolution No. S. 101/7007.
Bombay Castle, 24th March 1942.

Memorandum from the Collector of Poona, No. L.A.W. 527, dated the 10th March 1942.

Memorandum from the Commissioner, Central Division, No. L.A.W. 293, dated the 17th March 1942.

Resolution -In exercise of thepowers conferred by section 93 of the Code of Civil Procedure, 1908, the Government of Bombay is pleased to accord sanction to th exercise, by the Collector of Poona, of the powers conferred by section 92 of the said Code on the Advocate General in respect of the institution of the suit by Mr. D.G.Agashe and three others of Alandi, with regard to the properties belonging to the shrine of Shree Ram at Alandi.

By order of the Governor of Bombay,

R.F.Keith.

Under secretary to Government.

To

The Commissioner, Central Division.
The Collector of Poona (with the case papers).
The District Judge, Poona.
The Remembrancer of Legal Affairs.
The Legal Department.
The Home Department.

No. of 1942.

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Submitted.

The President, Surat Borough Municipality states that the Municipality has been experiencing difficulties in recovering municipal taxes from persons who have migrated to the Native States because the warrants served by the Chief Officer under section 105(1) of the Bombay Municipal Boroughs Act, 1925 against such persons are returned unexecuted by the authorities in the Native States on the ground that there is no reciprocal arrangement between the Government of Bombay and the Native States as regards execution of warrants. The result is that municipal taxes due from thepersons who have migrated to Natives States become irrecoverable and have eventually to be written off. The Commissioner, N.D. states that adequate provision is made in Chapter VIII of the Municipal Boroughs Act, 1925, and there appears no necessity for amending the Municipal Boroughs Act providing for reciprocal arrangement. The Commissioner, C.D. observes that if in case a Municipality has very heavy arrears due from a resident in an Indian State which cannotbe recovered inxxx the manner laid down in Chapter VIII of the Act, it may file a suit against such person and obtain a decree and execute the same in the Native State concerned in pursuance of the ~~reciprocal~~ reciprocal arrangement between the British Government and the Indian State.

2. In para. 2 of the G.D. office

note dated 11th February 1942, it is stated that in case there are no receiprocal ar angements between the provincial Government and any particular State under section 45 of the Code of Civil Procedure, 1908 the decree can be passed on to the Court in such a State by making section 45 af applicable to it, provided that the Court in suh such a State is established with the authority of the Central Government or the Crown Representative.

3. The questionfor the R.L.A's consideration are these:-

(1) whether the presumption that section 45 of the Code of Covil Procedure 1908 has been made applicable to the Co-urts in States between which and the Provincial Government there are no reciprocal arrangments, is correct; and

pp. 25-26 ante.

(2) whethere it will be necessary to un-dertaken legislation in the matter as proposed by the president, Surat Borough Municipality.

pp. 105 and 107.

4. Question (1):- Any amount due on account of a tax m ay be revovered under the provisionsof Cha pter VIII of the Bombay District Municipal Act, 1901 , and the Bombay Municipal Boroughs Ac , 1925, and in case of failure to realise the amount under the provisi.ns of Chapter VIII, by instituting a ~~suti~~ suit against the person in a Court of competent jurisdiction as required by section 164 of the Bombay District Municipal Act or section 203 of the Bombay Municipal Act, 1925, as the casemay be. If a suit is filed and

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Office of the E.L.A.

"Reciprocating territory" as defined in Explanation 2 to section 44A of the Civil Procedure Code means any country or territory situated in any part of His Majesty's Dominions etc. The territory in a native State of India is not a part of His Majesty's Dominions. The words "or in India" in this explanation were omitted by the Government of India (Adaptation of Indian Laws) Order 1937. Consequently section 44A has no application to the execution of decrees of any court in a native state by courts in British India and vice versa. The relevant provision is section 45. Under that section it is necessary that the transferee court should be one (1) which is established or continued by the Governor General in Council in such foreign territory, and (2) to which the Governor-General in Council has by notification declared his section to apply. Court has no jurisdiction to send its decrees for execution to a court not situate in British India, the reason being that the Indian Legislature has no power to legislate for foreign courts (42 Bom. 420 at p. 429). But by treaty arrangements decrees of British Indian Courts may be executed in Courts of native States (40 Mad. 1069; see Chiteley's Civil Procedure Code. Volume. I. 3rd edition. P. 451).

Sd/- P.N.Moos.

6-4

O.C. Remembrancer of Legal Affairs.

U.R . to O.S..No. 2936. dated the 7th April 1942.

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Office of the R. L.A.

The question raised for the consideration of the Remembrancer of Legal Affairs is whether it will be feasible to authorise Mahalkaris being declared Gazette-d subordinates for the purpose of section 54 of the Civil Procedure Code.

2. The expression 'Gazetted Subordinate' in section 54 of the Civil Procedure Code has notbeen defined in the Civil Procedur Code. Subparagraph 2 of section 9 of the Bombay Land Revenue Code, 1879, provides that all Assistant and Deputy Collectors appointed under p aragraph 1 and other officers employed in the land revenue administration shall be subordinate to the Collector. Mahalkaris who are appointed under section 13 of the code are subordinates of the Collector. Under rule 9(21) of the Bombay Civil Services Rules a Gazetted Government servant is one who is a member of an All India or Provincial Service or a person appointed in accordance with the terms of a contract or agreement and who-se appointment is gazetted by Government. Under the exception to that rule certain Government servants (e.g. Mamlatdars but not Mahlakaris) are treated as gazetted Government servants although the conditions in the clause have not been fulfilled. The Bombay Civil Services Rules are statutory and are determinative of the conditions of service of the persons serving the provincial Government under section 241(2)(b) of the Government of India Act, 1935. The expression 'Gazetted Subordinate' in section 54 of the Civil rocedure Code will have to be interpreted in thelight of B.C. S.R. 9(21). It is not understood under wh at provision of law it is proposed to declare Mahal karis as gazetted subordinates of the Collector. Perhaps theobject in view may be achieved by a suitable amendment of section 54 of the Civil Procedure Code.

Sd/- P.B.Koos.

Extra. O.C. Remembrancer of Legal Affairs.

U B. to H.D . No. 3110, dated the 10th April 1942.

S.A.S.

Religious and charitable endowments.
Religious and charitable properties belonging to Shri Gram Dev. temple at Algeri, district Kanara.

Government of Bombay.
Revenue Department.
Resolution No. 6. 101/7460
Bombay Castle, 7th April 1942.

Letter from the Collector of Kanara, No. 7155, dated the 9th March 1942.

Memoraddum from the Commissioner, Southern Division, No. L.A. W. 658, dated the 19th March 1942.

Resolution.:- In exercise of the powers conferred by section 93 of the Code of Civil Procedure, 1908, the Government of Bombay is pleased to give sanction to the exercise, by the Collector of Kanara, of thepowers conferred by section 92 of the said Code on the Advocate General in respect of the institution of the suit by Messrs. D.S.Desai, R.K.Shet and R.B.Gaonkar of Algeri in connection with the religious and charitable prope-rties belonging to Shri Gram Dev temple at Algeri.

By order of the Governor of Bombay,

L.P. Keith,

Under Secretary to Government.

To

The Commissioner, Southern Division.
The Collector of Kanara (with the case papers)
The District Judge, Kanara.
The Remembrancer of Legal Affairs.
The Legal Department
The Home Department.

No. of 1942.

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Religious and charitable endowments.
Religious and charitable properties belonging to Darga known as Hajrat Pir Ibrahim Khalil at Achra, taluka Malvan, district Ratnagiri.

GOVERNMENT OF GOVERNMENT.
Revenue Department.
Resolution No. S. 101/12855
Bombay Castle, 8th June 1942.

Letter from the Collector of Ratnagiri, No. L.A.V. 107, dated the 14th May 1942.

Memorandum from the Commissioner, Southern Division, No. L.A.V. 661, dated the 23rd May 1942.

Resolution:- In exercise of the powers conferred by section 93 of the Code of Civil Procedure, 1908 the Government of Bombay is pleased to give sanction to the exercise by the Collector of Ratnagiri of the powers conferredby section 62 of the said Code on the Advocate General in respect of the institution of the suit by Shaikh Musa Shaikh Ismail Mujawar and Shaikh Yusuf Shaikh Yunus Mujawar, both of Achra, in connection with the religious and charitable properties belonging to the Darga known as Hajrat Pir Ibrahim Khalil at Achra.

By order of the Governor of Bombay

V.L. da Cunha,

Assistant Secretary to Government.

To

The Commissioner, Southern Division,
The Collector of Ratnagiri,
The District Judge, Ratnagiri,
The Remembrancer of Legal Affairs,
The Legal Department
The Home Department.

No., of 1942.

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Submitted.

Under Rule 17 of the Rules regulating the execution of decrees transferred to the Collector for execution under Sec. 68 of the Civil Procedure Code, 1908 an appeal lies to the Collector against any order passed under para. 10(a) of the Third schedule of the Code by an officer subordinate to the Collector. The comm. C.D. presumes that in view of this specific provision, these appeals cannot be heard by the Prant officers though under Sec. 10 of the Bom. Land Rev. Code he can exercise all the powers of a Collr. under the Code or any other law for the time being in force. The Hon. R.L.A. is requested to advise whether this presumption is correct.

3. Under para. 10(a) of the third sch. schedule to the Civil Proc. Code, 1908, the collector is required to fix a reasonable reserved price for each lot of the decretal property to be sold by auction in execution of civil court decrees. The price is in practice reserved by the Mamlatdar or Mahalkari under the powers delegated to him by the Collector by virtue of Rule 2 of the Rules made by Govt. inpursuance of decrees transferred to the Collr. for executionunder the provisions of sec. 68 of the code. Rule 17(1) as recently amended by G. R. H.D.No. 5782/4 dt. 6/6/ 42. provides that an appeal shall lie to the collector against any order passed under paragraphs 7.8. and 10(a) & (c) of the Third Schedule to the said Code and rules 11. 13 and 15 of these rules by an

officer subordinate to the Collector; subject to this provision, no appeal shall lie against any orderpassed by an officer subordinate to the collector under the provisi ns of the thrird schedule to the said code or of these rules. The words underlined above would include a Prant fficer also and therefore an appeal against the order of the Prant officer under para. 10(a) of the Third Schedule to the Code fixing a reserved price can only lie to the collector. Although therefore under sec. 10 of the Bom. Land Rev. Code, 1879, the Prant Officer can exercise all the powers of a collector under that code or any other law at the time being in force, itdoes not appear, in view of the specific provisi ns made in rule 17(1), that he would be entitled to hear such appeals. The words 'any other law at the time being in force' in Sec 10 relate to any law ejus dem generis with the Land Rev. Code. (see Sonu Janardhan vs. Arjun, I.L.R. 39 Bom. 552). As the civil Pro. Code, 1908 under which rules for execution of decrees transferred to the Collector are framed does not deem to be a law ejus dem generis with the Bom. Land Rev. code, 1879 (cf. R.L.A's No. 2501, d/- 9/3/40; No. 658, d/- 3/2/32) it does not appear that the Prant officer can hear such appeals. The presumption made by the commr. C.D. at 'X' in his letterat pp. 27-28 ante, appears to be correct.

P.S.Nadkarni
11-6

S.A.K.
7-5-56.

A.S.

I agree.

4. Copies.

Inex exercise of powers vested under section 70 of the Civil Procedure Code, Govt.

Office of the R.L.A.

The Commissioner's presumption at X of his at letter at pp. 27-28 ante is correct. Attention is invited to Comm Janardhan Kulkarni vs. Arjun Barku Kumbi. I.L.R. 39 Bom. 552 where the point raised by this reference is fully dealt with.

P.O. Sd/- P.H.Kean.

Remembrancer of Legal Affairs.

U.O. to H.D.No. 5260, dated the 27th June 1942.

S.A.K.
7-5-56.
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Religious and charitable endowments.
Religious and charitable properties belonging to Devjagan Mahadeo temple at Wade, taluka Jambusar, district Broach and Panch Mahals.

Government of Bombay
Revenue Department.
Resolution No. S. 101/17770
Bombay Castle 25th July 1942.

Letter from the collector of Broach and Panch Mahals No. L.A.V. dated the 20th March 1942.

Memorandum from the commissioner, Northern Division No.N.L. A.V. -100-III dated the 20th July 1942.

Resolution:- In exercise of the powers conferred by section 93 of the Code of civil Procedure, 1908, the Government of Bombay is pleased to accord sanction to the exercise, by the Collector of Broach and Panch Mahals, of the powers conferred by section 92 of the said code on the Advocate General in respect of the institution of the suit by Mr. Parshram Nawang and certain other residents of Wada, taluka Jambusar, district Broach and Panch Mahals, in connection with the religious and charitable properties belonging to the Devjang Mahadeo temple at Wada.

By order of the Governor of Bombay.

Sd/- P.P.Saith.

Under Secretary to Government.

To

The Commissioner, Northern Division.
The Collector of Broach and Panch Mahals (with the case Papers).
The District Judge, Broach and Panch Mahals.
The Remembrancer of Legal Affairs.
The Legal Department
The Home Department.

No. of 1942.

Copy forwarded for information and guidance to

S.A.K.
7-5-56.
4 Copies.

Religious and charitable endowments.
Religious and charitable properties belonging to Shri Vithoba temple at Sirsi, district Kanara.

Government of Bombay.
Revenue Department.
Resolution No. S. 101/17650.
Bombay Castle 28th July 1942.

Letter from the Collector of Kanara, No. 7193 dated the 9th July 1942.

Memorandum from the Commissioner, southern Division, No. L.A.V.- 655, dated the 15th July 1942.

Resolution:- In exercise of the powers conferred by section 93 of the code of Civil Procedure, 1908 the Government of Bombay is pleased to give sanction to the exercise, by the Collector of Kanara, of the powers conferred by section 92 of the said code on the Advocate General in respect of the institution of the suit by Mr. Venkatraman Subrao Barkur and two other residents of Sirsi in connection with the religious and charitable properties belonging to shri Vithoba temple in Marigudi Street at Sirsi.

By order of the Governor of Bombay

P.V.Keith,

Under Secretary to Government.

To

The Commissioner, Southern Division,
The Collector of Kanara (with the case papers),
The District Judge Kanara,
The The Remembrancer of Legal Affairs.
The Legal Department.
The Home Department.

No. of 1942.
Copy forwarded for information and guidance to

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7-5-56.
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Religious and charitable endowments.
Religious and charitable properties belonging to Shri Marikamba temple at Sirsi, District Kanara.

Government of Bombay
Revenue Department.
Resolution No. S.. 101/18537.
Bombay Castle, 5th August 1942.

Letter from the Collector of Kanara, No. ir 7194, dated the 16th July 1942.

Memorandum from the Commissioner, S.D., N . L.A.V.- 684, dated the 15th July 1942.

Memorandum from the Commissioner, S.D..No. L.A.V. 694 dated the 30th July 1942.

Resolution:- In exercise of the powers conferred by section 93 of the Code of Civil Procedure, 1908, the Government of Bombay implement to sanction the exercise by the Collector of Kanara, of the powers conferred by section 92 of the said Code on the Advocate General on request of the Institution of the suit by Messrs. Krishnarao Baburao Marathe and Ramrao Manjanath Soiroo, both of Sirsi, in connection with the religious and charitable properties belonging to the Shri Marikamba temple at Sirsi.

By order of the Governor of Bombay.

Sd/- S.J.Zaith.

Under Secretary to Government.

To
The Commissioner, S.D..
The Collector of Kanara(with the case papers).
The District Judge, Kanara.
The Remembrancer of Legal Affirs.
The Legal Department.
The Home Department.

No. of 1942.

Copy forwarded for information and guidance to

S.A.R.

7-5-56
4 Copies.

Religious and charitable endowments.
Public charitable education trust
at Khoj, taluka Bardoli, district Surat
Institution of suit in connection with.

Government of Bombay.
Revenue Department.
Resolution No. S. 101/19381.
Bombay Castle, 17th August 1942.

Letter from the Collector of Surat, No. L.A.W. 675, dated the 31st July 1942.

Memorandum from the Commissioner, Northern Division, No. L.A.W. 100-III, dated the 11th August 1942.

Resolution :- In exercise of the powers conferred by section 93 of the code of Civil Procedure, 1908, the Government of Bombay is pleased to give sanction to the exercise, by the Collector of Surat, of the powers conferred by section 92 of the said Code on the Advocate General in respect of the institution of the suit by Mr. Ambaidas Gopaldas and three other residents of Khoj in connection with the public charitable education trust at Khoj in taluka Bardoli of the Surat district.

By order of the Governor of Bombay

Sd/- R.F.Keith,
Under secretary to Government.

To
The Commissioner, Norther Division,
The Collector of Surat (with the case papers)
The District Judge, Surat,
The Remembrancer of Legal Affairs.
The Legal Department
The Home Department
The Educational Department.

No. of 1942.

Copy forwarded for information and guidance to

S.A.K.
7-5-56.
4 Copies.

Religious and charitable endowments.
Belonging to Shri Ekmath temple at Harnai in taluka Dapoli.

Government of Bombay.
Revenue Department.
Resolution No. S. 101/1924.
Bombay Castle 27th August 1942

Letter from the Collector of Ratnagiri, No. L.A.M. 104 dated the 25th July 1942.

Memorandum from the Commissioner, Southern Division, No. L.A.t. 669, dated the 1st August 1942.

Resolution:- In exercise of the powers conferred by section 93 of the Code of Civil Procedure, 1908, the Government of Bombay is pleased to sanction the exercise, by the Collector of Ratnagiri, of the powers conferred by section 92 of the said Code on the Advocate General, in respect of the institution of the suit by Mr. S.N.Joshi and four other residents of Harnai, in connection with the religious and charitable properties belonging to Shri Ekmath temple at Harnai.

By order of the Governor of Bombay

Sd/- S.F.Keith
Under Secretary to Government.

To

The Commissioner, Southern Division.
The Collector of Ratnagiri.
The District Judge, Ratnagiri.
The Remembrancer of Legal Affairs,
The Legal Department.
The Home Department.

No. of 194.

Copy forwarded for information and guidance to

S.A.K.
7-5-56.
4 Copies.

Religious and charitable endowments.
Religious and charitable properties belonging to shree Muni Suvratswami's temple at Bodhan in taluka Mandvi. district Surat.

Government of Bombay.
Revenue Department.
Resolution No. S. 101/20220
Bombay Castle, 27th August 1942.

Letter from the Collector of Surat No. L.A.V.- 677, dated the - August 1942.

Memorandum from the Commissioner, Northern Division, No. L.A.V. - 100-III, dated the 21st August 1942.

Resolution:- In exercise of the powers conferred by section 93 of the code of Civil Procedure, 1908, the Government of Bombay is pleased to sanction the exercise, by the Collector of Surat, of the powers conferred by section 92 of the said Code on the Advocate General in respect of the institution of the suit by Mr. Mohanlal Bhutaji and four other residents of Bodhan, in connection with the religious and charitable properties belonging to Shree Muni Suvratswami's temple at Bodhan.

By order of the Governor of Bombay

Sd/-
Under Secretary to Government.

To

The Commissioner, Northern Division.
The Collector of Surat (with the case papers).

The District Judge, Surat.
The Remembrancer of Legal Affairs.
The Legal Department
The Home Department.

No. of 1942.

Copy forwarded for information and guidance to

S.A.K.
7-5-56
4 Copies.

L.D.P.I.No. 9487
1/9/1942.

Submitted.

2. About 12 prohi-bitory orders from the small Causes Court, Bombay and 1 from the High Court, Bombay (pp. 61-62 ante) attaching the salary of Mr. Narurkar, an Assistant have been received by R.D. According to these orders a moiety of Mr. N's pay in excess of Rs. 100 has to be deducted and sent to the Courts for satisfaction of decrees Rules 2 of to Rule 75A(a) of Financial Rules provides for exclusion of subscriptions made to certain funds recognised by Govt. from the aggregate amount for the purpose of attachment by a Court. The question raised by R.D. for the consideration of the R.L.A. is whether subscriptions to funds recognised by Govt. referred to in Rule 2 under the Financial Rule 75A(a) should be deducted from the aggregate amount payable to Mr. N as salary, before calculating the moiet-y of his pay.

3. Clause (i) of section 60(1) of the Civil Proc. Code, 1908 provides that the salary of a public officer to the extent of the first hundred rupees and one-half the rea remainder of s uch salary is exempt from attachment. Mr. Narurkar's pay being Rs. 300/- R.D. has to deduct a moiety of his pay in excess of Rs. 100/- i.e. Rs.300 minus Rs.100 Rs.200 Rs. 100 and forward the same to the court. Rules 2 to the Financial Rule 75A(a) provides that subscriptions to funds recognised by Govt. instalments in re-payments of advances from the General Prov. Fund and recoveries of

Funds--- recognised by Govt. instalments in re-
payments or advances from the General Prov.
Fund and recoveries of incometax, deductions
for which appear in the pay bills should be
excluded from the aggregate amount for the
purpose of attachment by a Civil Court. In
view of this specific provision there appears no legal
objection to deduction being made of subscripti ns
to funds etc. stated in the rule before calculating
a moiety of his pay. But any other deducti nmade by Govt.
from his pay bill for the sake of c nvenience such as pay-
ments towards Post Office Insurance Policies or any other
insurance policies, pension schemes annuity funds etc.
which do not fall within the protecti n afforded by the
Prov. Funds Act, 1925 should n t be excluded from the
salary for the purpose of calculating the portion which
is attachable. (of Para 4 of H.L.A.'s opinion No. 5860,
dated 3.7.1942.)

Id/- P.S.Wadkarni
1/9/42.

A.S.

The main question involved is whether rule 2 at A is valied-valied
Please see whether L.D. was consulted then the rule was firmed and
consider the validit, of rule 2 to the Financial Rule 75A(a)

Id/-H.T.K.

2/9.
Mr. Wadkarni

Resubmitted.

2. It is ascertained from F.D. that this Deptt. was not
consulted when Fin. Rule 75A(a) was encodied in the Fin. Publn.
No. 1 and that it was adopted from the old edition of the Civil
Account Code, Vol. I (8th edn).

Office of the P.L.A.

A sum of Rs. 80-5-0 and not Rs. 100 should be
as deducted from Mr. Hari Narurkar's pay.

Sd/- P.N.Kaos.
2d/- D.L.A.

U.R. to R.D.No. 7430, dated 16-9-42.
S.A.K.

R.I.No. 5111
18-8-42.

Submit ed.

The facts of the case are as follows:-

In 1930, one Desai Manilal Ashram obtained a d·cree for Rs. 800 and costs in Suit No. 518 of 1928 in the Court of the 2nd Class Sub-Judge at Godhra against Babubhai and Bhupatrai sons of Chunilal Desai who were minors an d their guardian of the Suit was their mother, Bai Lilavati. This decree was finally confirmed by the High Court, Bombay, on 19.7.1936. During the pendancy of the appeal in the H.C.Babubhai attained majority in 1937 and he was brought on record. His brother attained majority in 1939. The Darkhast No. 696/31 filed in the original court was transferred in 1932 to the Collr. of Broach and Panch Mahals for the sale of one anna share of the Judgment-debtors viz. Babubhai and his brother in the Inami villa e of Dhandhalpur in Godhra Taluka. The execution proceedings were stayed in April 1936 underorders from the H. C. and were resumed in about April 1940. The Mamlatdar held auction sale of th property on 6.12.1940 and the price realized was Rs. 2501. The property was sold to one Desai Champaklal Dwarkadas the brother-in-law of the judgment creditor Mr. Manilal Ashram Desai. The Col r. confirmed this sale on 3.9.1940. On 2 .9.1941, the jud ment debtors viz Bhabubhai and his brother Bhupatbhai preferred an appeal to the Commr. S D. against the above order of the Col r. confirming the sale. On 16.12.1942, the Commr. held that under the rules, no appeal

lies against the Collr's decision in such cases. He therefore declined to interfere or exercise the revisional powers in the matter as the sale held by the Mamlatdar was not vitiated. Against this order, the judgment-debtors have now approached Govt. for redress. In their petition the petitioners have stated that no notice of the auction sale was served on them even though they had attained majority, that the proceedings were continued against them as majors even after they attained majority and that this is an illegality which would vitiate the sale. This point has been examined by the Addl. D.G.P., Broach and Panch Mahals in his opinions No. 19 dated 29.5.41 and No. 26 dated 21.8.41 and he has held that the irregularity pointed out by the petitioners is not such as to affect the validity of the sale or sufficient to set it aside. The R.D. has decided to reject the petition if the opinion of the Addnl. D.G.P., Broach and Panch Mahals is confirmed by the R.L.A.

3. The question for consideration is whether the view expressed by the Addnl. D.G.P., Broach & Panch Mahals in his opinions dated 29.5.41. and 21.8.41, is correct.

4. The view taken b the Addnl. D.G.P., Broach & Panch Mahals ap-pears to be correct. The petitioners have stated that they attained majority in 1937 and 1939 and respectively. The Addnl. D.G.P. has stated in his opinion at p. 152 of the Collr's file that they attained majority on 30.9.35 and 8.5.1939 respectively. It seems that petitioner No. 1 Babubhai was brought on the record in the appeals before the H.C. in 1937 and his name was entered as major in the Darkhast on 26.11.1938. When the execution proceedings were resumed in 1940, both the petitioners were majors. The Collr., it seems, has transferred the decree to the Mamlatdar for execution. Notice under Rule (3) read with Rule (5) of the Rules made under G.N.,J.D.No. 1209, dated the 6th February 19[illegible]

S.A.K.
8-5-56.

4 Copies.

was served on both the petiti ners as represented by their guardian mother. But from the endorsement at the back of this notice, it appears that this notice was served on the petitioners and petitioner No. 1 has signed for himself and his brother. From the Rosnama at p. 6 of the Collr's file , it is clear that the petitioners appeared personally before the Mamlatdar on 16.7.1940 and put in their written statement. (p. 129 ibid). The petitioners were therefore aware of the proceedings taken against them and they had also an opportunity to put up their case before the Mamlatdar. The service of notice on them as minors therefore is not an illegality. It is a mere irregularity and the sale is not vitiated because of that. (Seshagiri Rao vs. Hanmantha Rao I.L.R. 39 Mad. 1031; Ramachari vs. Duraiswami Pillai I.L.R. 21 Mad. 167 and Malkarjun vs. Harbari I.L.R. 25 Bom. 337).

5. Rule 9(b) of the Rules made by Govt. under sec. 70(1) of the C.P.C. published in G.N.,J.D.No. 1209 dated the 6th February 1920, provides that <u>except as in otherwise provided by the said code</u>, every sale shall be proclaim-ed and held in the manner prescribed by the rules for the time being in force relating to the sale of immoveable property in realisation of arrears of land revenue. Secti n 166 of the Land Revenue Code provides that a written notice of the intended sale of immoveable property shall be affixed in each of the following places - Collector's office, the Mamlatdar's office and the Chavdi or some other public bldg. in the village where such property is situate an and the defaulter's dwellingplace. Rule7(a)

S.A.K.

of the Rules framed by Govt. under section 70(1) C.P.C. provides for publishing of a notice prior to sale as a public notice to the claimants to pfoperty. Under rule 7(b) such notice is to be published in the manner prescribed in sub-para(2) of para 3 of the Third Schedule to the said Code. Under that para a copy of th notice is to be sent by post or otherwise to a decree-holder or claimant if his address is known. A notice of sale was given to the petitioners as minors and it is signed by the petitioners at the back. The petitioners had therefore ample notice and it does not appear that any sub-stantial injustice has been caused by the fact that the petitioners were treated as minors after they attained majority. There is therefore no case for Govt. interference.

6. It may however be pointed out that no appeal can now be entertained by Govt. in view of theprovisions of Rule 17(2) of the Rules published in G.N.J.D.No. 1209 dated 6.2.1920(amended recently by G.N.H.D., No. 5782/4 dated 6.4.1942.

Sd/- S.R.Potnis

9-9

A.S.

It appears that one of the petitioners who were sued as minors attained majority during the pendancy of the appeal in the High Court and was brought on record. Ultimately a decree was passed and in execution of that decree their property was sold. It appears that in the execution proceedings both petitioners were described as minors although one of them had attained majority long before thedecree was passed and theother sometime in 1939i.e. before the auction sale took place. The petitioners contend that no notice of auction sale was served on them though they had become majors and

S.A.K.

8-5-56. 4 copies

and consequently the sale proceedings are vitiated. The question for the consideration of the R.L.A. is whether their contention is correct.

In re Sheshagiri Rao Vs. Hanumantha Rao (39 Mad. 1031) it was held that a decree obtained against a person treating him as a minor while in reality he was a major on its date is not a nullity and consequently a sale in execution of such a decree could not be set aside on the ground that the court had no jurisdiction. In the same case Napier J. observed: "I am satisfied that if the majority of the plaintiff had occurred after the decree we would have treated the notice of the execution proceedings to the guardian instead of to the plaintiff as a mere irregularity on the authority of the Privy Council in Malkarjun Vs. Narhari (25 Bom. 337)." In the present case also notice of execution proceedings were served on the guardian of the petitioners instead of on the petitioners themselves. Consequently such notice to the guardian was merely an irregularity and the auction sale is not vitiated thereby. The view taken by the Addl. G.P., Broach & Panch Mahals is correct.

Id/- R.T.K.
12-9

A.L.R. I agree/Reply may be A
P.S.H
22-9

R.L.A. I agree
P.H.Moos
26-9

Office of the R.L.A.

The view taken by the Additional Government Pleader, Broach and Panch Mahals is correct.

P.H.Moos
28-9

O.C. R.L.A.

S.A.K.
8-5-56.

U.R. to R.D.No. 7881. dated 29th Sept. 1942. 4 Copies.

Office of the R.L.A.

The question for the consideration of the R.L.A. is whether in cases of Civil Court decrees transferred to Collectors for execution under section 68 of the Civil Procedure Code locks can be broken open, if necessary, in order to give possession of houses shut up by judgment debtors.

2. Under section 68, Civil Procedure Code, the execution of decrees in which a Civil Court has ordered an immoveable property to be sold or the execution of any particular kind of such decrees or the execution of decrees ordering the sale of any particular kind or interest in immoveable property can be transferred to the Collector. Clause (b) of section 70 provides for power of the Provincial Government to make rules conferring upon the collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector. Rules 82 to 103 of o. 21 prescribe the powers of the Civil Court with regard to the sale of immoveable property, the issue of a sale certificate to the auction purchaser, the delivery of possession of property after sale, the investigation of any claim thereto and the removal of obstruction to the delivery of possession thereof. Rules can therefore be framed under clause (b) of section 70 conferring all or any of these powers upon the Collector or any gazetted subordinate of the Collector. O. 21, r.35 provides for execution of a decree for delivery of possession of immoveable property and not for execution of a decree for sale of immoveable property. A decree for mere possession of immoveable property cannot be transferred to the Collector for execution. Consequently no rule can beframed under section 70(b) transferring the powers of the Civil Court under O. 21, r. 35(3) to the Collector or any gazetted subordinate of the Collector.

3. The next question for consideration is whether the delivery of possession of locked houses is possible under rule 13 of the Rules framed by Government undersection 70(b) of the Civil Procedure Code. Rule 13 provides for delivery of possession mf to the purchaser at a sale if need be by removing any person who

S.A.K.
8-5-56
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refuses to vacate. Rule 13-3 provides that where the Collector is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment debtor or by some other person at his instigation, he shall direct that the applicant be put into possession of the property and where the applicant is still resisted or obstructed in obtaining possession, the Collector may also at the instance of the applicant, order the judgment debtor or any person acting at his instigation to be detained in civil prison for a term which may extend to thirty days. Rule 130 provides that the Collector can do nothing if the resistance or obstruction was occasioned by any person other than the judgment debtor claiming to be in possession of the property on his own account or on account of some other person. The Rules made by Government under section 70(1) of the civil Procedure Code do not deal with the delivery of possession of a locked house. But in order to make such delivery effective, actual and not symbolical possession appears necessary. "The Collector is not a mere ministerial officer charged with the duty of selling property under the directions of the Court but the whole execution execution of the decree is transferred to him". (See 37Bombay 490). It seems therefore that by virtue of his powers as the executing authority, the Collector would have power to break open the lock provided that the lock represented obstruction by the judgment debtor or some person claiming under title created by the judgment debtor. (See R.L.A's opinion No. 7350 dated 15.8.1940). Rules 13 to 13-0 correspond with rules 95 to 99 of O.21. It is true that the latter rules contain no provision similar to rule 35(3) of O. 21 providing for power to break open any lock or door; but the power to deliver possession would, it seems, imply power to break open any lock or door. If the lock however were placed there by some the third party with a bona fide claim, then the Collector would have no power to remove it. On this point the Collector will have to satisfy himself and for that purpose he may have to hold an enquiry.

Sd/- P.E.Moos.
1/10

Remembrancer of Legal Affairs.

U.R. to H.D. No. dated 2.10. 1941.

No. 98 of 1942.

Wai,
Dated 24th Sept. 1942.

To
The Remembrancerof Legal Affairs, of Bombay.

Sir,

I beg to refer for your Honour's opini n the following two cases:-

(1) In a Darkhast matter, theimmoveable property of the judgment-debtor was to be attached for the recovery of the Govt. Court Fee Stamp amount and according to Rule 152(b) of the Law officer's Rules I can apply for the attachment of Any property of the judgment-debtor even though he is an agriculturist for the recovery of the same , if there is no specific order of the Court charging the property in suit. No doubt under order XXXIII Rule 10 such amount shall be a first charge on the subject matterof the suit and the subject matfer of the suit for maintenance would be the maintenance allowed claimed and not the property from which that allowance is to come vide R.L.A.No. 2868 of 15.3.1939. A question having arisen how far the rules can be followed by the Court or whether the rules can be taken notice of by the Court as the Civil Procedure Code itself. The Rules are framed for the guidance of the Law Officers. Are they meant for the guidance of the court also along with the Civil Procedure Code of which the Court can take notice of and follow when referred to before the Court.

(2) "A" theadopted son minor by his guardian mother brings a suit in pauperism for declaration and possession of the suit properties. His adoption was held valied but he was held not entitled to theproperties in suit. His suit for that purpose was dismissed and was ordered to pay the Govt. court fee Stamp amount in Court. The wording of the decree is વાદીને સરકારી સૅપાંચે ખર્ચ કોર્ટને ભરવેલ There is no usual and necessary wording in the decree સરકારની સરકારી સૅપાંચે ખર્ચ, વાદીકુન વસુલ કરાવેલ e.e. there thewording in the decree does not authorize or direct the Govt. to recover the Govt. Courtfee Stamp amont from the plff. Does that wording serve sufficient for the

S.A.K.
8-5-55.
4 Copies.

the Govt. to recover the amount from the plff. and will that wording afford any opportunity to the plff. to contend if the Darkhast is filed in court . And another difficulty is that as the suit was dismissed no charge was created upon the property in suit. The adopted son is on War Service and his mother is getting Rs. 5/- for maintenance per month and is residing at present in her brother's house in Wai. Under these peculiar circumstances how the amount of the Govt. Court fee Stamp which is amount Rs. 335/- is to be recovered and what procedure to be followed for the satisfaction of the decree.

I shall feel highly obliged if your Honour will kindly be pleased to enlighten and to reply to this at an early date for my my guidance in e ecution matters which are of daily occurrence.

Yours obedient servant.

Sd/-

Sub-Govt. Pleader, Wai. Dist. Satara.

Submitted.

Please put up the opinion of 39 referred to

Id/- B.G.M.
24-9

A.S.
Submitted with Vol.// C.C.C.P.C./ 3740 containing the

H.L.A.'s opinion.

Id/-M.N.N.
28/9

A.S.

The Sub. G.P. may be informed on the following lines:-

As regards the first case the Rules for the Conduct of Legal Affairs are not Statutory and have not the force of law But on the principle that the Crown is not bound by a statute unless named expressly or by necessary implication. it can be urged that the Dekkhan Agriculturalrist Relief Act. 1879. does not apply to the Crown. and para. 1 of section 22 thereof does not exempt immoveable property of an agriculturist from attachment and

S.A.K.
5-5-56.
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And sale in realisation of Crown dues. (See 1868 B.H.C.R. 23 . I Bom. 7; 14 Bom. 213; 35 Bom. L.R. 820).

In the second case, as the Court has directed the plaintiff to pay the Court fees, there is no legal difficulty in Govt. applying to Court to enforce payment. As the pauper plaintiff is on war service, his pay is not liable to attachment; nor can the maintenance allowance paid to his mother, be attached. Proceedings can be taken again against any property which the plff. may possess. The sub.Govt. Pleader should consult the Collector on this point and take the necessary action in time (Rule 152, clauses (b) and (c) and Rules 153 and 154 of Rules for the Conduct of Legal Affairs.

Id/- .G.M.

28-9

H.L.A. P.N.Kees.
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No. 8064
Office of the
Remembrancer of Legal Affairs.
Bombay Castle 5th October 1942.

MEMORANDUM.

With reference to his letter No. 95. dated the 24th September 1942. the Sub-Government Pleader. Wai. is informed as follows:-

As regards the first case. the Rules for the Conduct of Legal Affairs are not statutory and have not the force of Law. But on the principle that the Crown is not bound by a statute unless named expressly or by necessary implication. it can be urged that the Dekkhan Agriculturists Relief Act. 1879. does not apply to the Crown. and paragraph 1 of section 22 there of does not exempt the immoveable property of an agriculturist from attachment and sale in realisation of Crown dues. (See 1868 B.H.C.R. 23; 1 Bom. 7; 14 Bom. 213; 35 Bom. L.R. 820).

In the second case. as the Court has directed the plaintiff to pay the court fees. there is no legal difficulty in Government applying to court to enforce payment. As the pauper plaintiff is on war service. his pay is not liable to attachment; nor can the maintenance allowance paid to his mother be attached. Proceedings can be taken against any property which the plaintiff may possess. The Sub-Government Pleader should consult the collector on this point and take the necessary action in time (Rule 152. clauses (b) and (c) and Rules 153 and 154 of the Rules for the Conduct of Legal Affairs of Government).

Sd/- B.G.K.

Remembrancer of Legal Affairs.

To.

The Sub-Government Pleader,
Wai. District Satara.

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8-5-56.

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Religious and charitable endowments.
Religious and charitable properties belonging to shri Bhumi Devi temple at Baithkol in taluka Karwar. district Kanara.

Government of Bombay.
Revenue Department.
Resolution No. S. 101/24033. 2104
Bombay Castle. 20th October 1942.

Letter from the Collector of Kanara. No. 7191 dated the 25th September 1942.

Memorandum from the Commissioner, Southern Division. No. L.A.V. - 672 dated the 8th October 1942.

Resolution:- In exercise of the powers conferred by section 93 of the Code of Civil Procedure, 1908 the Government of Bombay is pleased to sanction the exercise, by the Collector of Kanara, of the powers conferred by section 92 of the said Code on the Advocate General, in respect of the institution of the suit by Mr. Krishna Shinde Patel and three other residents of Baithkol, in connection with the religious and charitable properties belonging to Shri Bhumi Devi temple at Baithkol.

By order of the Governor of Bombay.

R.F.Keith.
Under Secretary to Government.

To

The Commissioner, Southern Division.
The Collector of Kanara (with the case papers).
The District Judge, Kanara.
The Remembrancer of Legal Affairs.
The Legal Department.
The Home Department.

No of 1942.

Copy forwarded for information and guidance to

B.A.K.
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Religious and charitable endowments.
The L.S.Lallubhai Karsandas Public
Charitable Trust at Ahmedabad.
Institution of suit in connection with.

Government of Bombay.
Revenue Department.
Resolution No. S. 101/[illegible] 26646.
Bombay Castle, 20th November 1942.

Read Government Resolution, Revenue Department, No. S. 101/9111, dated the 4th May 1936.

Letter from the Collectorof Ahmedabad, No. L.A.M.-581, dated the 2nd November1942.

Memorandum from the commissioner, Northern Division, No. L.A.M. 100-III, dated the 11th November 1942.

Resolution:- In exercise of the powers conferred by section 93 of the Code of Civil Procedure, 1908, the Government of Bombay is pleased to give sanction to the Collector of Ahmedabad to exercise, in respect of the institution of the suit by Messrs. Jivanlal Vrajrai Desai and Chimanlal Trikamlal Thakore of Ahmedabad concerning the Rao Saheb Lallubhai Karsandas Public Charitable Trust at Ahmedabad, the powers conferred by section 92 of the said Code on the Advocate General

By order of the Governor of Bombay.

J.B.Bowman,

Under secretary to Government.

To
The Commissioner, Northern Division,
The Collector of Ahmedabad.(with the case paper
The District Judge of Ahmedabad,
The Remembrancer of Legal Affairs,
The Head Department,
The Legal Department.

No. of 1942.

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P.I.No. 11[illegible]
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Submitted.

The facts are as follows:-

Mrs. Hildegard is the widow of the late Mr. Richard Mueller, a German Aryan, whom Govt. exempted from re-internment on account of his advanced advanced age. Mr. Mueller died of typhoid on 2.6. 1941. Mrs. Hildegard Mueller arrived from Germany on 7.1.1935 and since then she has been residing in Bombay. It is stated that she has been allowed to remain at liberty in Bombay subject to certain restrictions under the Enemy Foreigners Order, 1939.

2. Messrs. Little & Co. Solicitors of Mrs. Hildegard Mueller, state that the late Richard Mueller, at the time of his internment was partner in the business of B.Rich Muhller and Co. in Bombay or had an interest in that business. One Mr. Maneckji Bhathena, however, claims to be the sole proprietor of that business Mrs. Hildegard Mueller wishes to apply for and obtain a grant of Letters of Administration of the estate of her late husband from the High Court, Bombay, and to commence legal proceedings against Mr. Bhathena in the High Court for enforcing the claims which the estate has against him. Messrs. Little & Co. on behalf of their client, Mrs. Mueller, have applied to Govt. for permission under section 83 of the Code of Civil Procedure, 1908, to apply for and obtain a grant of Letters of Administration of the estate of her late husband from the High Court, Bombay, and to commence proceedings against Mr. Bhathena.

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3. The H.D. office considers that the permission of Govt . to sue in the Courts of Br. India is not required tobe obtained by an ~~alien enemy~~ alien enemy residing in British India with the permission of the ~~General~~ Central Govt. The question for the consideration of the R.L.A. is whether the view expressed in the H.D. office note dated 30.10.42. is correct.

4. Under sub-section (1) of section 83 of the Code of Civil Procedure, 1908, alien enemies residing in Br. India with the permission of the Central Govt. AND ALIEN FRIENDS, MAY SUE in the Courts of Br. India, as if they were subjects of His Majesty. Under sub-section (2) no ali en enemy residing in Br. India without such permission, or residing in a foreign country, shall sue in any such Courts. The cumulative effect is that an alien enemy residing in Br. India can sue in the Courts of Br. India provided that such residence is with the permission of the Central Government. The permission need not be express, but may be presumed from the circumstances. Where the alien enemy has resided in Br. India from before the outbreak of war and contines to remain after such outbreak without being ordered to remove himself , permission may be presumed. (A.I.R. (1918) Mad. 1294 at 1295). The fact that an alien enemy was not interned was construed as an implied permission to reside by the Central Govt. (I.L.R. 39 ALL p. 377). Mr. Mueller has been residing in Bombay since January 1935. i.e. since before the outbreak of war, and the fact that she has been allowed to remain at liberty in Bombay subject to certain restrictions under the Enemy Foreigners order, 1939, would be construed as a permission to reside in Br. India by the Central Govt.

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Office of the R.L.A.

Sub-section (1) of section 83 of the Code of Civil Procedure provides that alien enemies residing in British India with the permission of the Central Government and alien friends may sue in the courts of British India as if they are subjects of His Majesty. Sub-section (2) lays down that no alien enemy residing in British India without such permission or residing in a foreign country shall sue in any such courts. There is nothing in section 83 which indicates that the permission of Government would be necessary before an alien enemy could sue. All that the section provides is that an alien enemy would not be entitled to sue in the courts of British India unless he has been residing with the permission of the Central Government. The question whether or not Mrs. Hildegard is residing with the permission of the Central Government is one of fact which will be a matter for the court to decide. It does not therefore appear necessary for Government to grant permission to Mrs. Hildegard to sue or apply for letters of Administration of the estate of her deceased husband. The view expressed in the H. office note dated 30-10-42 is correct.

Sd/- [illegible].H.Moos
25/11
Remembrancer of Legal Affairs.

U.R. to H.D. No. 9483, dated the 26th November 1942.

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